

PURCHASE ORDER TERMS AND CONDITIONS

- Acceptance.** These purchase order terms and conditions (collectively “Terms”) control the purchase of goods and/or services listed in this purchase order (the “PO”) and shall be considered as part of and integrated with the PO. If a separate contract exists between the parties related to the purchase of such goods and/or services, then to the extent there is a conflict between the terms of the PO and the terms of such separate contract, the terms of such separate contract shall prevail. Any of the following acts by Seller shall constitute acceptance of the PO and all Terms: (a) signing and returning a copy of the PO, (b) returning Seller’s acknowledgement of receipt, (c) delivery of any items and/or performance of any services ordered, or (d) informing Buyer in any manner of acceptance or commencement of performance and/or delivery of any goods or services listed in the PO. Any other term or condition stated by Seller in any other document shall be a proposal for an addition to these Terms and shall not become part of this PO unless expressly accepted in writing by Buyer.
- Packing; Shipment.** Shipment shall be in accordance with instructions specified in the PO and all goods shall be suitably packed to ensure against damage from weather or transportation and to secure lowest transportation costs, in accordance with the requirements of common carriers, and to. Buyer’s PO number(s) must be plainly marked on all invoices, packages, bills of lading and shipping orders. A packing list shall accompany each box or package shipment showing Buyer’s PO number and description of goods.
- Delivery; Title; Risk of Loss.** TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THE PO. Delivery of goods shall be made in strict accordance with the Terms of the PO. Title and risk of loss for all items shipped under the PO shall transfer to Buyer upon actual delivery to Buyer’s destination, subject to Buyer’s right to inspect, accept or reject such items.
- Warranty.** Seller warrants that it has good title to all goods being delivered to Buyer, and that all goods covered by the PO shall (i) be free and clear of all liens and encumbrances (ii) be free from any defects in design, material or workmanship, and shall be of good and merchantable quality, (iii) conform to Buyer’s drawings, specifications, and instructions, if any, whether set forth in the PO or in any documents attached to or referred to in the PO or otherwise provided to Seller, and to any sample approved by Buyer, (iv) be fit and safe for all purposes for which such goods are being purchased hereunder, and (v) have been produced, performed, processed and delivered in conformity with all applicable laws and regulations. No approval by Buyer of any design furnished by Seller shall constitute a waiver by Buyer of Seller’s obligations hereunder. Any third party warranties to Seller, together with Seller’s service warranties and guarantees, shall run to Buyer and/or its customers, and shall survive inspections, acceptance, and payment. Seller warrants that any services performed by Seller or Seller’s designee (if permitted) shall be performed in a professional manner and in accordance with (i) the requirements set forth in the PO and these Terms, (ii) the standards of care and diligence practiced by recognized organizations in performing services of a similar nature at the time the services are performed, and (iii) all applicable laws, regulations, codes, and other standards.
- Inspection; Payment.** All goods and services covered by the PO shall not be accepted by Buyer until final inspection by Buyer. Any prior inspection at source or any payment shall not constitute acceptance. Unless otherwise expressly stated in the PO, Buyer shall remit payment to Seller for all goods and/or services within 30 days following the later of either completion of Buyer’s inspection or receipt of Seller’s invoice. All invoices shall contain the PO number and be sent to Accounts Payable at Buyer’s address set forth in the PO.
- Changes.** Buyer reserves the right, at any time, by written, telegraphic, or electronic notice to suspend performance by Seller hereunder, whether in whole or in part, or to make changes in the scope of service, deliverables, drawings, specifications, or shipping instructions. Any difference in price or time for

performance resulting from such change, whether by way of increase or decrease, will be equitably adjusted and the PO modified in writing accordingly; provided that any claim for adjustment by Seller, and the amount thereof, shall be made in writing within twenty (20) days from receipt by Seller of notice of change or be conclusively deemed waived. Nothing contained herein shall excuse Seller from proceeding with performance under the PO as changed.

7. **Assignment.** Any and all amounts paid or to be paid hereunder are subject to setoff or recoupment for any present or future claim or claims which Buyer may have against Seller whether under the PO or otherwise. Seller agrees that it will neither assign its rights nor delegate its duties under this PO without Buyer's prior written consent. Seller shall furnish Buyer with a signed copy of any permitted assignment. Payment to assignee in accordance with any such assignment shall be subject to setoff or recoupment for any present or future claim or claims of any nature which Buyer may have against Seller. Buyer reserves the right to make, without notice to the assignee, direct settlements and/or adjustments in price with Seller under the terms of the PO notwithstanding any assignment of monies due or to become due hereunder.
8. **Compliance with Law; No Waiver.** Seller shall comply with all applicable international, federal, state and local laws, rules and regulations in its performance of the PO. No waiver by Buyer, whether express or implied, of any of the Terms of the PO, shall be or be construed to be a continuing waiver, nor deprive Buyer of the right to reassert or rely upon any such item or conditions hereunder.
9. **Indemnification; Insurance; Intellectual Property.** Seller agrees to indemnify, defend and hold harmless Buyer, and its successors, assigns, subsidiaries, and affiliates, from and against any and all expenses, costs, liabilities, claims, damages and/or other losses (including attorneys' fees) arising from or related to the goods and/or services covered by the PO, Seller's acts, omissions or negligence, or any actual or claimed infringement of patents, trademarks, copyrights or other intellectual property. Seller agrees to maintain, during the performance of the PO and thereafter, comprehensive general liability insurance, worker's compensation insurance, contractual liability insurance, professional liability and product liability insurance in reasonable and customary amounts as are necessary to adequately cover Seller's potential liabilities that may arise in connection with the PO. Seller hereby grants to Buyer an exclusive, royalty-free, fully-paid up, perpetual license, with the right to grant sublicenses, under any inventions, improvements or discoveries conceived or first reduced to practice by Seller, alone or with others, as a result of the provision of any goods and/or services under the PO, with a right to manufacture, produce, and sell goods made in accordance with, containing, or embodying such inventions, improvements, and discoveries. Seller hereby grants to Buyer a non-exclusive, royalty-free, fully-paid up, perpetual license, with the right to grant sublicenses, under any intellectual property that belongs to Seller and is incorporated in any goods and/or services provided under the PO, with a right granted to Buyer to manufacture, produce, and sell goods made in accordance with, containing, or embodying such intellectual property. All written materials (including reports and their contents, whether in electronic form or otherwise), plans, specifications, designs, drawings, blueprints, and other creative works developed or prepared by Seller during performance of services shall be considered as works made for hire and all copyrights and other rights in and to such items shall be the sole property of Buyer. Seller hereby assigns to Buyer all right, title and interest in and to such copyrights in the U.S. and elsewhere, including registration and publication rights, rights to create derivative works and all other rights which are incident to copyright ownership.
10. **Cancellation.** Buyer shall have the right to cancel the PO for any reason in whole or in part from time to time. In the event the goods ordered herein are not standard and Seller has incurred non-cancelable out-of-pocket expenditures relating thereto, Buyer shall only be liable for payment of such actual non-cancelable out-of-pocket expenditures that cannot be mitigated by Seller and shall have no other liability to Seller. All unused material, parts or supplies acquired by Seller, and all items wholly and/or partially fabricated shall be the property of Buyer. If the goods ordered herein are standard items or the PO is for the performance of services, Buyer shall have the right to cancel the PO without any obligation or liability whatsoever except for payment for any goods delivered or services performed prior to such cancellation.

In the event of a breach of any of the Terms of the PO by Seller, or in the event of any proceeding by or against Seller in bankruptcy or insolvency or for appointment of any receiver or trustee or general assignment for the benefit of creditors, Buyer may, in addition to other available remedies, without any liability to Seller, by providing notice, cancel all or any part of the PO, procure the required supplies and/or services elsewhere, and Seller shall be liable to pay Buyer the excess costs or other damages caused by Seller as a result thereof.

11. **Confidentiality; Buyer's Materials; Independent Contractor; Governing Law.** All specifications, drawings, designs, know-how, trade secrets, customer lists, sales information, technical data, inventions, or other information that is disclosed by Buyer to Seller, or that is developed by Buyer or Seller in connection with the subject matter of the PO, shall be the sole property of Buyer, and Seller agrees to retain all such information in confidence and not to disclose it to any other person or utilize it except in connection with the PO. Any materials (including, without limitation, drug compounds, components, excipients, cell lines, samples, devices, tissue, or biologicals) provided by Buyer (or Buyer's designee) to Seller shall remain the sole property of Buyer, and Seller agrees (i) to only use the materials for the purpose(s) of the PO, (ii) to treat any information regarding the materials as confidential, (iii) that all right, title, and interest in and to the materials (and all derivatives thereof) shall remain solely in Buyer, and (iv) Seller shall return the materials to Buyer upon the earlier of the expiration or cancellation of the PO or at Buyer's request. Seller is an independent contractor and not an employee of Buyer. Neither party shall have the right, power or authority to obligate or bind the other in any manner whatsoever. The PO shall be deemed to have been executed in and is subject to enforcement and interpretation under the laws of the State of New York (except its choice of law rules).



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